

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1904.

No. 1484.

MARY E. BUNTEN, APPELLANT,

vs.

AMERICAN SECURITY AND TRUST COMPANY, A BODY
CORPORATE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

MARY E. BUNTEN, Appellant,
vs.
AMERICAN SECURITY AND TRUST COMPANY, a Body Corporate. } No. 1484.

a Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,
vs.
AMERICAN SECURITY AND TRUST COMPANY, a Body Corporate, Defendant. } No. 45832. At Law.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:—

1 *Declaration in Ejectment, etc.*

Filed Dec. 16, 1902.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,
vs.
AMERICAN SECURITY AND TRUST COMPANY, a Body Corporate, Defendant. } At Law. No. 45832.

The plaintiff sues the defendant, a body corporate, organized under the laws of the United States, relating to the District of Columbia, to recover the following described real estate, situate in the county of Washington, District of Columbia, to wit:—Lot numbered forty-three (43), of Elizabeth Lanier Dunn's subdivision of part of Jackson Hill and Mount Pleasant, known as Lanier Heights, as the same is recorded in Book Governor Shepherd, page 174, one of the records of the surveyor's office of said District; in which she claims a fee simple; and of which the plaintiff was lawfully possessed on

or about the 24th day of April, 1900, when the defendant entered the same, and unlawfully ejected the plaintiff therefrom, and unlawfully detains the same from the plaintiff; and the plaintiff claims possession of said part of lot, with the appurtenances, and costs of suit.

B. F. LEIGHTON,
Attorney for Plaintiff.

2 In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
vs.		
AMERICAN SECURITY AND TRUST COMPANY, a Body Corporate, Defendant.		

Notice to Plead.

The defendant is to plead hereto, on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

B. F. LEIGHTON,
Attorney for Plaintiff.

3

Plea of General Issue.

Filed Jan. 8, 1903.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
v.		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

The defendant says it is not guilty as alleged.

W. D. DAVIDGE,
Attorney for Defendant.

4

Joinder of Issue, etc.

Filed Jan. 10, 1903.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
vs.		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

The plaintiff joins issue with the plea of the defendant The American Security and Trust Company.

B. F. LEIGHTON,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
<i>vs.</i>		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

Notice of Trial.

5 Please take notice that the issue joined in this cause will be tried at the next term of this court.

B. F. LEIGHTON,
Attorney for Plaintiff.

To W. D. Davidge, Esq., attorney for defendant.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
<i>vs.</i>		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

The clerk will please take notice:—

First. That the title of this action is as above set out.

Second. That the attorney for the plaintiff is B. F. Leighton, Esq., and for the defendant, W. D. Davidge, Esq.

Third. That the last pleading herein was filed January 9th, 1903.

B. F. LEIGHTON,
Attorney for Plaintiff.

6 *Stipulation Waiving Right of Trial by Jury.*

Filed May 6, 1904.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
<i>vs.</i>		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

It is hereby stipulated and agreed by and between the parties to the above entitled cause, through their respective attorneys, that the same may be tried by the court, without the intervention of a jury; the right of trial by jury being hereby expressly waived.

MARY E. BUNTEN,
By B. F. LEIGHTON, *Her Attorney.*
AMERICAN SECURITY AND
TRUST COMPANY,
By W. D. DAVIDGE, *Its Attorney.*

Supreme Court of the District of Columbia.

FRIDAY, *June* 10, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * *

MARY E. BUNTEN, Pl'ff,	} At Law. No. 45832.
v.	
AMERICAN SECURITY AND TRUST COMPANY, Def't.	

The parties hereto, by their attorneys, having filed herein a stipulation waiving a trial by jury, and submitting this case to the court for consideration, and the same having been argued and submitted, the court after considering the same, finds the issues herein in favor of the defendant: Therefore it is considered that the plaintiff take nothing by her suit, and that the defendant go thereof without day and recover against the plaintiff its costs of defense to be taxed by the clerk, and have execution thereof.

Opinion of Court.

Filed June 10, 1904.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN	} # 45832. At Law.
vs.	
THE AMERICAN SECURITY AND TRUST Company.	

In this case a declaration has been filed in ejectment to recover possession of lot 43 of Elizabeth Lanier Dunn's subdivision of parts of Jackson Hill and Mt. Pleasant, known as "Lanier Heights," of which the plaintiff was, as she alleges, lawfully vested the 24th day of April, 1900, when the defendant entered and unlawfully ejected her therefrom, and now unlawfully detains the same from her.

The defendant pleads the general issue, on which plea issue is joined; and by stipulation of parties, a jury is waived, and the case is submitted to the court for trial.

Both parties agree that the title to the property was duly vested in one Harriet Patience Dame, and the plaintiff claims the same by virtue of a last will and testament, duly executed by the said Harriet P. Dame, on the 21st day of April, 1900. It appears that the testatrix died on the 24th day of April, 1900, in the town of Concord, county of Merrimack, and State of New Hampshire; and

9 that her will was duly admitted to probate in the probate court of said county, the same having been executed as required by law in this District to convey real estate.

The defendant claims the title to said property by virtue of a deed in trust, executed by Harriet P. Dame, bearing the date of June 18th, 1892, and duly acknowledged the said date, and thereafter recorded on May 21st, 1900, in Liber 2,479 and folio 177 *et seq.* At the date of the execution of said deed, a collateral agreement was entered into by and between Harriet P. Dame and the defendant herein, the said deed being referred to, and made part of said collateral agreement, wherein it was stipulated that said Miss Dame was to pay the taxes and assessments on the property, or on any other property substituted therefor according to the terms of the deed in trust, and also indemnify the defendant against all costs and charges incurred in defending the title of said premises, or any substitute therefor; and the defendant agreed to accept the trust, and execute the same for a compensation of 3% per annum upon the income, if any there be, of the said premises or substitute therefor, etc.; and then this clause is added before the signature to the said agreement, but after the attestation clause thereto:

“It being distinctly understood and agreed, by and between the parties hereto, as the intention and direction of the said party of the first part, that the said deed of the said party of the first part shall be held by the said party of the second part, but shall not be placed on record in the office of the recorder of deeds, until the death of the said grantor, unless previously specifically instructed in writing by the said party of the first part so to do.”

10 While the defendant was holding the said deed in trust, and before it had been recorded, the said Harriet P. Dame on May 24th, 1897, wrote to the defendant a letter referring to said deed in trust, as a contingent conveyance, and giving notice of a revocation of said deed, and the direction to withhold the same from record, in the following words:

“I do not understand that that deed has taken effect, and I wish to revoke, and do hereby revoke it. Please cancel both the agreement and deed, and return them to me by the bearer hereof.”

The defendant declined to cancel the said deed and agreement, and return them to the said Harriet P. Dame, and by its attorney wrote her a letter on May 27th, 1897, in which they acknowledged the receipt of her letter and said:

“We are of opinion that we have no authority whatever to cancel or annul this trust.”

The reason assigned for this action was, that the diocese of the cathedral had certain vested rights in the said trust, which the defendant had no authority to destroy; and might be held answerable by the bishop, if Miss Dame's request was complied with.

Nothing further was done by either party in reference to a termination of the said agreement, or revocation of said trust, during the life time of the plaintiff's testatrix, except the execution of her will as aforesaid, devising this property to

the plaintiff. It is claimed by counsel for the plaintiff that the said deed in trust, was such as to give the defendant no right whatever in said property during the life time of the grantor; that she retained dominion over it and over the said deed, and that her notification in writing that she revoked the same, and her direction to the defendant to cancel it, prevented the title ever passing to the defendant; and as between the plaintiff herein and the defendant, the fact of the deed being retained by the defendant until the death of the grantor, and then placed upon record, can be of no avail as against the plaintiff's rights as devisee under the said will.

The provisions stated in the said deed were *first*, to permit the said grantor and her assigns during her natural life, to use, occupy and enjoy the said described land and premises, and the rents, issues and profits thereof, to have, take and apply to and for her and their sole use and benefit: *second*, upon the written request of the grantor to convey in fee simple to such person or persons as she may designate in writing, the said property; and the proceeds to be received from it, less any proper costs and charges, to be applied to the purchase of such other parcels of land and premises as the grantor may designate in writing; which new purchase is to be held by the trustee on the same trusts as the property described; and with like power to sell and reinvest, on the written direction of the grantor continually, whenever, and as often as the party of the second part is requested, and directed by the party of the first part as aforesaid. *Third*, after the death of the grantor, 12 the said land, or any property substituted for it, to be held by the trustee, and from time to time the said party of the second part to apply, use, and dispose of the same as directed by, *first*, the *bishop* for the time being of the diocese of the Protestant Episcopal Church of the United States of America, in which this district shall be; and *second*, the rector for the time being of the present parish of St. John's of the said church of Washington city, and *third*, the wardens for the time being of the said parish of St. John's, and *fourth*, the Rev. George Wm. Douglas, S. T. D., and now rector of the said parish of St. John's, for the maintenance and support of two or more scholarships in a school for girls under the control of a cathedral established for the aforesaid diocese, provided such school be established before the expiration of twenty years from and after the death of said grantor; and said scholarships to be at the disposal of the bishop of the diocese of New Hampshire, to be selected by him in a certain manner specified; and in trust in the event of the grantor's death to convey the said property as the said parties above named, or a majority of them, may in writing direct, and use the proceeds to purchase other property to take the place of that held by the said trustee at the death of the grantor, and to repeat such sale and reinvestment continuously.

This deed of trust, and the agreement executed at the same time with it, and referring to it, must both be construed together as one instrument; and the question is, reading the two papers together as

if they were embraced in the same deed, was the title of the said real estate vested in the defendant in such a manner as to
13 be beyond the control and dominion of the said grantor, or was it a contingent conveyance, or an undelivered deed, within the meaning of delivery, in order to invest absolute title? There can be no question but that the deed was delivered to the grantee, because the said agreement so provides, and also operates as a direction of the said grantor that the grantee was to retain the same, without being recorded, until the death of the grantor, unless she directed in writing that the same should be recorded during her life time.

It does not appear from the said deed of trust and agreement that she reserved any right to cancel the said deed, or to revoke the same. The only control she seems to have reserved to herself over the deed, was to have it withheld from the record until her death, or until her written direction during her life.

No question is made in argument by the plaintiff as to the validity of the trusts named in the said deed, but the case is placed upon the theory that the grantor had retained control of said deed so as to prevent its operation in transferring the property to the grantee; and that her written direction, in the letter of May 24th, 1897, did withdraw the deed from the grantee, and the title and property from its operation in behalf of the said contemplated charity. It is true that the said beneficiaries, and the said trustee, had no beneficial interest in the said property during the life of the grantor; and she might have directed a conveyance of the said land, and the
14 reinvestments, but no such direction was given. If the title passed by the said deed, the beneficial interest to take effect at the death of the grantor, then there was nothing left for the grantor to dispose of by her said will, and of course the plaintiff in that event cannot recover in this action.

Recording is not essential as between the parties themselves to the conveyance of real estate; neither is actual livery of seisin as was required by the common law.

I am of the opinion that from the facts in this case, and considering the wording of the deed and the agreement executed with it, and construed as a part of it, that there was a transfer of the legal title to the trustee, the defendant herein, subject to the control of the grantor for the purpose of changing the investments, but not subject to revocation; and that the grantor did, by the delivery of the deed to the grantee, lose all control over it, save in one respect, which was to direct that the deed should be recorded during her life time. If such a direction had been given, the trustee would have been obliged to record the deed; and if the grantor had seen fit to change the investment during her life time, such an order would have been necessary in order to place upon record the title to the grantee, whose duty it would have been in that event to have executed a conveyance of the property to the purchaser.

It is this delivery of the deed and this acceptance, and the pro-

visions for the execution of the deed by the grantee to a future purchaser on the written request of the grantor, that distinguishes this instrument from a will. A will is always in the control of
 15 the testator during his life, but a deed must be delivered over directly to the grantee, or to some third person in escrow, in order to take effect as a deed, and the grantor must give up all control of the paper itself, intentionally and irrevocably.

Inasmuch as the will could not take effect until the death of the testatrix, and inasmuch as the devisee in the will must be treated as a volunteer, or one who takes property as a gift without consideration; and as the legal title to the defendant, and the equitable title and estate to the officers of the church, passed on the execution of the deed, (the latter, however, to begin immediately on the death of the life tenant,) there was no title left in the grantor to this property to be disposed of by her will.

The court is therefore forced to the conclusion that the plaintiff must fail in this suit, and that the judgment must be for the defendant.

JOB BARNARD, *Justice*.

16

Memoranda.

June 14, 1904.—Appeal noted and bond fixed at \$100; and time to settle the bill of exceptions extended to Oct. 10, 1904.

July 6, 1904.—Leave granted pl'ff to deposit \$100.00 in lieu of bond on appeal. \$100.00 deposited in conformity with order.

Supreme Court of the District of Columbia.

MONDAY, *August 8th*, 1904.

Session resumed, Hon. Job Barnard, justice, presiding.

* * * * *

MARY E. BUNTEN, Plaintiff,	} No. 45832. At Law.
<i>vs.</i>	
AMERICAN SECURITY AND TRUST COMPANY, Defendant.	

Comes now the plaintiff herein by her attorney and presenting to
 17 the court the bill of exceptions taken at the trial of this cause,
 prays that the same be signed and made of record now for
 then, which is accordingly done.

18

Bill of Exceptions.

Filed August 8, 1904.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. 45832.
vs.		
AMERICAN SECURITY AND TRUST COMPANY, De- fendant.		

Be it remembered, that at the trial of the above entitled cause, on the 10th day of June, A. D. 1904, before Honorable Job Barnard, associate justice of the supreme court of the District of Columbia, without a jury, the parties to the said cause having consented, in writing, that the issues should be tried by the court, without a jury, Mr. B. F. Leighton appearing on behalf of the plaintiff, and Mr. Walter D. Davidge on behalf of the defendant;

The plaintiff, to maintain the issue on her part joined, produced and offered evidence as follows, to wit:—

It was admitted in open court, by the parties to the said cause, that the title to the real estate in controversy was deraigned from a common source.

Thereupon, to maintain the issue on her part joined, the plaintiff offered and read in evidence, a duly certified copy of a certain deed in trust from Harriet P. Dame to the American Security and
19 Trust Company, which had been duly recorded on the 21st day of May, 1900, in Liber 2479, folio 177 one of the land records of the District of Columbia, which deed is in the following language and figures, to wit:—

S. E. K. B.

Liber 2479, folio 177.

Harriet Patience Dame	}	Deed in trust. Recorded May 21st, 1900, 2.56 p. m.
to		
American Security and Trust Co.		

This indenture, made this 18th day of June A. D. 1892, by and between Harriet Patience Dame (unmarried) of the city of Washington and District of Columbia, party of the first part, and the American Security and Trust Company, of the same place, party of the second part, witnesseth, that for and in consideration of the sum of ten (10) dollars lawful money of the United States
Fee \$2.50 to her in hand paid by the party of the second part, the receipt of which at and before the sealing and de-

livery of these presents is hereby acknowledged the said party of the first part, has granted, enfeoffed and conveyed and by these presents does grant, enfeoff, and convey unto the said party of the second part, its successors and assigns, all that certain piece or parcel of land and premises, situate lying and being in the county of Washington and District of Columbia and known and described as and being lot numbered forty-three (43) of Elizabeth Lanier Dunn's subdivision of parts of Jackson Hill and Mount Pleasant, and known as "Lanier Heights," as the same is recorded in Book Governor
20 Shepherd at page one hundred and seventy-four (174) one of the records of the office of the surveyor of the District of Columbia: Together with all and singular the improvements, rights, privileges appurtenances and hereditaments to the same belonging, or in any wise appertaining and all the remainders, reversions, rents, issues and profits thereof, and all the right, title, interest and estate, of what kind so ever of the said party of the first part, in or to the same. To have and to hold the said piece or parcel of land and premises and appurtenances unto the said party of the second part, its successors and assigns, to its and their sole use, benefit and behoof forever: In trust nevertheless for the uses and purposes, and upon the terms and conditions following, that is to say, first to permit the said party of the first part and her assigns during her natural life to use, occupy and enjoy the said described land and premises, and such other land and premises as may be from time to time substituted therefor as hereinafter provided, and the rents, issues and profits as well of the land and premises hereby conveyed as of any such substituted land and premises, to have, take and apply to and for her and their sole use, and benefit. Second, upon the written request or requests and according to the written direction or directions of the said party of the first part from time to time or at any time during her natural life, to convey in fee simple to such person or persons, corporation or corporations, as may be designated in writing by her, the said described land and premises and any part thereof, without any liability on the
21 part of such person or persons, corporation or corporations to see to the application of the proceeds thereof, and the proceeds to receive and the same, less any and all proper costs and charges to apply to and invest in the purchase of such other pieces or parcels of land and premises as the said party of the first part may designate in writing and such other pieces or parcels of land and premises to receive and hold upon the like trusts as are herein expressed and provided for, in respect of and in relation to the said first above mentioned and described land and premises hereby conveyed and said other pieces or parcels of land and premises likewise to convey upon the written request or requests and according to the written direction or directions of the said party of the first part, from time to time or at any time during her natural life, likewise, without any liability on the part of any grantee thereof to see to the application of the proceeds thereof, and

the said proceeds to receive and the same (less any and all proper costs and charges) to apply and invest as aforesaid and so on continuously whenever and as often as it, the said party of the second part, its successors or successor may be so requested and directed by the said party of the first part, as aforesaid; and third upon and after the death of the said party of the first part the said described land and premises, or whatever other pieces or parcels of land and premises may at the time be held by it, the said party of the second part, its successors or successor, in substitution either directly or indirectly therefor in accordance with the provisions hereof,

22 to hold and from time to time to apply and dispose of under and in conformity to the direction of the officers and persons hereinafter named and for the purposes hereinafter stated, that is to say, under and in conformity to the absolute and sole discretion and written direction of the following officers and persons or a majority of them, namely, first, the bishop for the time being of that diocese of the Protestant Episcopal Church of the United States of America, of which the territory now known and geographically defined as the District of Columbia, shall or may form all or a part; second, the rector for the time being, of the present parrish of Saint John's of the said church aforesaid in the city of Washington, District of Columbia or of that parrish of the said church which shall or may in law have succeeded to said parrish of Saint John's; third, the wardens for the time being of the said parrish of Saint John's or of the parrish successor thereto as aforesaid (provided however that in respect of the participation by the said wardens in the direction aforesaid they shall be deemed to be and shall act as a unit) and fourth, the Reverend George William Douglas S. T. D. the now rector of the said parrish of Saint John's (provided however, that so long as the said Douglas shall or may continue to be such rector, he shall be entitled to but one voice in participating in the direction aforesaid); and for the purposes following namely, first for the endowment, maintenance and support of two or more scholarships of a school for girls in connection with or adjunct to or under the control and patronage of a cathedral established for the aforesaid diocese of the Protestant Episcopal Church of the United States of America, provided that such school be established before the expiration of twenty (20) years from and after the death of the said party of the first part, the said scholarship to be at the disposition, in the sole discretion of the bishop for the time being from time to time of the diocese of New Hampshire (however the same may be territorially be constituted) of the said Protestant Episcopal church aforesaid, but it is my wish and I so expressly direct, that none of the said scholarships shall at any time be awarded or disposed of by the bishop of the diocese of New Hampshire by or upon competition between or among applicants or eligibles therefor, and that they shall in all cases be disposed of by the bishop solely upon his judgment of the worth, merit and necessities of such applicants and eligibles; and secondly,

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in case the trusts hereinbefore specified and intended to be created shall from any cause fail to be executed as hereinbefore provided, within said period of twenty (20) years aforesaid, then to give, grant, and convey absolutely the said land and premises, substitutes and proceeds to the corporation of the said first mentioned diocese of the Protestant Episcopal church aforesaid, by whatever name the same *the same* may be known, and whether the same now exists or be at any time hereafter created; with full power and authority and in express trust to the said party of the second part, its successors or successor, after the death of the said party of the first part, to permit the officers and persons aforesaid, the rents,

issues and profits of the said described land and premises or
24 the substitute or substitutes therefor, to take, have and apply

in their absolute discretion for the purposes aforesaid, and also the said described land and premises or the substitute or substitutes aforesaid or any part or parts thereof upon the written request or requests and according to the written direction or directions from time to time or at any time of the officers and persons aforesaid, or a majority of them to convey in fee simple to such person or persons, corporation or corporations as may be designated in writing by the said officers and persons aforesaid or a majority of them without any liability on the part of such person or persons, corporation or corporations to see to the application of the proceeds thereof and the said proceeds to receive and the same (less any and all proper costs and charges) to apply to and invest in the purchase of such other pieces or parcels of land and premises as the said officers and persons aforesaid or a majority of them may designate in writing, and such other pieces or parcels of land and premises, to receive and hold upon the like trusts as are herein expressed and provided for in respect of and in relation to the first above mentioned and described land and premises hereby conveyed, and said other pieces or parcels of land and premises likewise to convey upon the request or requests and according to the written direction or directions of the said officers and persons aforesaid or a majority of them from time to time, or at any time during the continuance of the trusts hereby created likewise without any liability on the part of the grantee therefor to see to the appli-

cation of the proceeds thereof, and the said proceeds

25 to receive and the same (less any and all proper costs and charges) to apply and invest as aforesaid, and so on con-

tinuously whenever and as often as it, the said party of the second part, its successor or successors may be so requested and directed by the said officers and persons aforesaid or a majority of them, the said party of the second part being hereby expressly absolved in any and every case from any and all liability to see to the application by the officers and persons aforesaid of the said lands and premises, [substitute]* substitute, substitutes or proceeds.

In testimony of all which the said party of the first part has hereunto set her hand and seal the day and year first aforesaid.

HARRIET PATIENCE DAME. [SEAL.]

Witness-:

H. S. REESIDE.

PERCY B. METZGER.

DISTRICT OF COLUMBIA, ss:

I, Howard S. Reeside a notary public in and for the said District do hereby certify that Harriet Patience Dame (unmarried) party to a certain deed bearing date on the — day of June A. D. 1892 and hereunto annexed, personally appeared before me in the said District, the said Harriet Patience Dame being personally well known to me to be the person who executed the said deed and acknowledged the same to be her act and deed.

Given under my hand and official seal, this 18th day of June A. D. 1892.

HOWARD S. REESIDE,

[NOTARIAL SEAL.]

Notary Public.

26

(Endorsed.)

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS,
February 1, 1902.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2479 fol. 177 *et seq.* one of the land records of the District of Columbia.

GEO. F. SCHAYER,

[SEAL.]

Dep. Recorder of Deeds.

27 To further maintain the issues on her part joined, the plaintiff produced and offered in evidence, a certain agreement, bearing date the eighteenth day of June, 1892, between the said Harriet P. Dame and the defendant; the execution thereof, having been admitted by the parties in open court. Said agreement is in language and figures following, to-wit:

Memorandum of agreement made and entered into this 18th day of June, 1892, by and between Harriet Patience Dame, of the city of Washington, District of Columbia, party of the first part, and the American Security and Trust Company, of the same place, party of the second part.

Whereas, by deed bearing date the 18th day of June, 1892, the said party of the first part conveyed to the said party of the second part, lot numbered 43 of Lanier Heights so called in the District of

Columbia, in trust for certain purposes in the deed declared (the said deed being referred to as part hereof) and has requested the said party of the second part to accept the same, which the said party of the second part consented to do upon the execution of these presents:

Now therefore this memorandum witnesseth, that for and in consideration of the premises and further the sum of one dollar lawful money of the United States to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part for herself, her heirs, executors, administrators and assigns has agreed and hereby does agree with the
28 said party of the second part and its successors that she, the said party of the first part, her heirs, executors, administrators and assigns, will at all times during the continuance of the trusts aforesaid, or any of them, at her and their cost, pay and discharge all taxes and public charges of what kind soever levied or that may be levied upon and against the said premises and any premises that may be substituted therefor in accordance with the terms of the said deed aforesaid, and also will save and keep harmless the said party of the second part and its successors from and against any and all costs and charges incurred or to be incurred in defending the title to the said premises or any substitute or substitutes therefor as aforesaid, or otherwise however.

And for the like consideration aforesaid, the said party of the second part has agreed and hereby does agree with the said party of the first part, her heirs, executors, administrators and assigns to accept the said deed aforesaid upon the trusts aforesaid and to execute the same and to ask and receive compensation in the premises only as follows, that is to say:

A compensation of three per centum per annum upon the income, if any there be of the said premises, substitute or substitutes aforesaid, so long as they shall or may remain in the hands or under the management of the said party of the second part, in accordance with the terms and conditions of the deed aforesaid, and upon the final conveyance by the said party of the second part or its successors of the said premises substitute or substitutes, in accordance with the terms and conditions of the said deed, a reasonable sum for whatever labor it may have performed or whatever services it may
29 have rendered in respect of the execution of the said trusts and the conveyance of the said premises substitute or substitutes as aforesaid.

In testimony whereof, the said party of the first part has hereunto set her hand and seal, and the said party of the second part has caused these presents to be signed by A. T. Britton, its president and its corporate seal to be hereto attached, the day and year first above mentioned.

It being distinctly understood and agreed, by and between the parties hereto, as the intention and direction of the said party of the first part that the said deed of the said party of the first part shall

be held by the said party of the second part but shall not be placed of record in the office of the recorder of deeds, until the death of the said grantor, unless previously specifically instructed in writing by the said party of the first part so to do.

(Signed) HARRIET PATIENCE DAME. [SEAL.]
[SEAL.] AMERICAN SECURITY & TRUST COM-
PANY,
By A. T. BRITTON, *President*.

30 Plaintiff further to maintain the issue on her part joined, produced and offered in evidence, a letter written by the said Harriet P. Dame, to Mr. Charles J. Bell, defendant's president, dated May 24th, 1897; the signature of the said Harriet P. Dame, thereto, having been admitted by the defendant, which letter was in language and figures following, to-wit:—

Copy.

WASHINGTON, D. C., *May 24, 1897.*

Mr. Chas. J. Bell, president American Security and Trust Co.

DEAR SIR: Under date of June 18th, 1892 I signed an agreement and deed, by which I conditionally conveyed to the American Security and Trust Company lot numbered forty-three (43) in the sub-division of land known as Lanier Heights, in trust for sundry purposes.

I do not understand that that trust has taken effect, and I wish to revoke, and do hereby revoke it. Please cancel both the agreement and deed and return them to me by the bearer hereof.

Very respectfully,
(Signed)

HARRIET P. DAME.

Plaintiff, further to maintain the issue on her part joined, produced and offered in evidence a letter bearing date May 27th, 1897, addressed to Miss Harriet P. Dame, and signed by the attorney of the American Security and Trust Company, which letter was in the following language and figures to wit:—

31 American Security and Trust Company, 1405 G street north-west.

WASHINGTON, D. C., *May 27, '97.*

Miss Harriet P. Dame, c/o Hon. H. M. Baker, 1411 F St. N. W., city.

DEAR MADAM: We beg to acknowledge the receipt of yours of the 24th inst., addressed to Mr. C. J. Bell, president of this company, in which you request that the deed in trust made by you to this com-

pany, co-veying lot 43 in the subdivision known as "Lanier Heights," in trust for certain uses and purposes in said deed fully set forth, and particularly for the purpose of the endowment, maintenance and support of certain scholarships of a school for girls in connection with and adjunct to or under the control and patronage of the Cathedral Establishment of the Diocese of the Protestant Episcopal Church of the United States of America, shall be by this company cancelled and annulled.

Upon a careful reading of the deed and agreement between this company collateral to said deed, we are of opinion that we have no authority whatever to cancel or annul this trust. The deed and the agreement accompanying it were both deliberately executed and delivered to this company for the uses intended, and the trust was duly accepted by this company. The diocese of the cathedral thereupon
 32 had vested in it certain rights which we would have no authority to destroy, and might be held answerable by the bishop of the diocese should we grant your request.

We suggest that you see Bishop Satterlee and tell him of your desire to revoke the trust, and he will probably find a way to accomplish your desire.

Very respectfully,

AMERICAN SECURITY AND TRUST
 COMPANY,
 By WM. A. McKENNEY, *Attorney.*

Plaintiff, further to maintain the issue on her part joined, produced and offered in evidence, a duly certified copy of the last will and testament of the said Harriet P. Dame, and of the decree admitting the same to probate and record; which said last will and testament had been duly admitted to probate and record in the probate court of the county of Merrimac, State of New Hampshire; the certificate accompanying said will, showed that the said Harriet P. Dame died in the county of Merrimac, State of New Hampshire, on the 24th day of April, 1900.

Said last will and testament was in language and figures following, to-wit:

I, Harriet P. Dame, of Concord in the county of Merrimac, and State of New Hampshire, being weak in body but of sound and perfect mind do make this my last will and testament.

33 First:—I give, bequeath and devise to Mrs. William E. Buntten, of Rondout, in the State of New York, in trust, my real estate situate on the plains, so called in Concord N. H.; my real estate situate in Washington, D. C., and all the rest of my real estate wherever situate; all money that I have, wherever deposited; all money due and owing me, whether the same be due and owing me on account of debt, on note, on note secured by mortgage or in any form whatsoever. The above is given, bequeathed and devised to said Mrs. William E. Buntten, the same to be held in trust by her

for the use and benefit of her daughter Mabel. She to at all times expend the income thereof for her said daughter Mabel's benefit.

Second: I give and bequeath to Mrs. William E. Bunten, and her daughter Mabel all my household furniture, both old and new, they to make such division thereof as they may deem fit.

Third:—I give and bequeath to my brother James daughter, one little silver ring, the same being known as my grandmother's wedding ring.

Fourth:—I give and bequeath to my sister Mrs. William Shackford, of Concord N. H., the sum of ten (\$10) dollars.

Fifth:—I give and devise to Mrs. William E. Bunten, and her heirs, all the rest and residue of my estate, whether real or personal.

Sixth:—I hereby appoint Thomas B. Lillte of Concord,
34 N. H., executor of this will, he not to be requested or required to furnish any bond.

In witness whereof I have hereunto set my hand and seal, this twenty-first day of April, nineteen hundred.

HARRIET P. DAME. [SEAL.]

Signed, and sealed by the above named Harriet P. Dame, as her last will and testament, and by us in her presence and at her request, subscribed as witnesses:

ANNIE P. DIMOND.

SARAH B. PATTERSON.

HARRY R. HOOD.

It was admitted in open court, that the defendant was, at the date of filing the declaration in ejectment, in possession of the property in controversy, and was still in possession thereof.

The plaintiff thereupon rested. The foregoing was all the evidence in said case.

Thereupon, the defendant, by its counsel, demurred to said evidence, and moved the court that the finding be for the defendant, and that judgment be entered in its favor, which motion the court granted; to which ruling, plaintiff excepted, which exception was duly noted by the court; and the said exception, taken at the trial of the above cause, is hereby made part of the record, this 8th day of August, A. D. 1904.

JOB BARNARD,
Associate Justice.

35 *Order Extending Time for Filing Transcript of Record.*

Filed August 8, 1904.

In the Supreme Court of the District of Columbia.

MARY E. BUNTEN, Plaintiff,	}	At Law. No. 45832.
vs.		
AMERICAN SECURITY AND TRUST COMPANY, Defendant.		

Upon motion of plaintiff's attorney, it is this 8th day of August, A. D. 1904, ordered that the time for filing the transcript of the record in the above entitled cause, in the Court of Appeals, on the appeal taken herein, be, and the same is hereby extended to October 3rd., A. D. 1904.

By the court:

JOB BARNARD, *Justice.*

36 Supreme Court of the District of Columbia.

MONDAY, October 3, 1904.

Session resumed pursuant to adjournment, Mr. Chief Justice Clabaugh, presiding.

* * * * * *

MARY E. BUNTEN, Pl'ff,	}	At Law. No. 45832.
v.		
AMERICAN SECURITY AND TRUST Co., Def't.		

Upon motion of plaintiff's attorney, it is this 3rd day of October, A. D. 1904, ordered that the time for filing the transcript of the record in the above-entitled cause, in the Court of Appeals, on the appeal taken herein, be and the same is hereby extended to October 15th, A. D. 1904.

By the court,

HARRY M. CLABAUGH,
Chief Justice.

37 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 36, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 45,832, at law, wherein Mary E. Buntten is plaintiff, and American Security and Trust Company, a body corporate, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District, this
Columbia. 8th day of October, A. D. 1904.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1484. Mary E. Buntten, appellant, vs. American Security and Trust Company, a body corporate. Court of Appeals, District of Columbia. Filed Oct. 12, 1904. Henry W. Hodges, clerk.